

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

VOYAGER DIGITAL HOLDINGS, INC., *et al.*,¹ Case No. 22-10943

Debtors.

(Jointly Administered)

DECLARATION OF ETHAN MCLAUGHLIN PURSUANT TO 28 U.S.C. §1746

I, Ethan McLaughlin, under penalty of perjury, make the following declaration:

1. I am an attorney admitted to practice in in the State of Vermont. I am employed as an Assistant General Counsel at the Vermont Department of Financial Regulation (the Department).
2. I make this Declaration in support of the Department's Objection to the Adequacy of Disclosure.
3. I am the attorney at the Department engaged in the review of the application of BAM Trading Services Inc. d/b/a Binance.us (Binance US) for a Vermont money transmitter license.
4. In order to grant a money transmission license to Binance US, the Vermont Commissioner of Financial Regulation (the Commissioner) must find that the financial responsibility, experience, character, and general fitness of Binance US command the confidence of the community and warrant belief that the business will be operated honestly, fairly, and efficiently pursuant to Vermont law. 8 V.S.A. § 2103(a). Such findings are also required with respect to each officer, director, and responsible individual of, and each person in control of, Binance US. *Id.*

¹ Debtors include Voyager Digital Holdings, Inc., Voyager Digital Ltd., and Voyager Digital, LLC. Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, New York 10003.

5. The Department is aware of the following facts which may be relevant to the Commissioner's evaluation of the financial responsibility, experience, character, and general fitness of Binance US and Mr. Zhao.

Regulatory Actions and Civil Litigation

6. Financial services regulators in a variety of jurisdictions have issued orders and taken other actions against entities operating under the Binance brand name (each, a Binance Entity) that are beneficially owned or controlled by Mr. Changpeng Zhao, the control person of Binance US (Mr. Zhao), including, without limitation, the following non-comprehensive list of actions:
 - a. On June 7, 2020, the Brazil Securities and Exchange Commission ordered "Binance Futures" to immediately suspend placement of any public offering of securities intermediation services, directly or indirectly, and to pay a fine (the Brazil Order)
 - b. On January 1, 2021, Binance US and the Ohio Department of Commerce, Division of Financial Institutions agreed to a Stipulation and Consent to the Issuance of an Order of Civil Penalty (the Ohio Consent Order). The Division found that Binance US engaged in unlicensed money transmission in violation of Ohio Revised Code 13.14.02(A).
 - c. On June 25, 2021, the UK Financial Conduct Authority (FCA) issued a supervisory notice to Binance Markets Limited (Binance UK) prohibiting the Company from carrying out any regulated activities for which it had previously been granted permission as an authorized investment firm (the UK FCA Notice). The FCA concluded that: "Based upon the Firm's engagement to date, the FCA considers that [Binance UK] is not capable of being effectively supervised. This is of particular concern in the context of the Firm's membership of a global [Binance] Group which offers complex and high-risk financial products, which pose a significant risk to consumers." See <https://www.fca.org.uk/publication/supervisory-notices/first-supervisory-notice-binance-markets-limited.pdf>.

- d. On July 22, 2021, the Thailand Securities and Exchange Commission (TH-SEC) announced that it had “filed a criminal complaint against Binance, a digital asset exchange platform provider, with the Economic Crime Suppression Division of the Royal Thai Police (ECD) for commission of offence under the Emergency Decree on Digital Asset Businesses B.E. 2561 (2018).” Following tips and the TH-SEC’s further inspection, the TH-SEC found that Binance has provided platform services for trading or exchanging digital assets without the requisite licenses and approvals. According to the press release by the TH-SEC, “filing the criminal complaint is merely the commencement of the criminal procedure whereby the inquiry official will perform an investigation before recommending the case to the public attorney who has authority for prosecution. The power to adjudicate whether any person is guilty or not is, however, vested on the court of justice.” See https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=9017.
- e. On July 30, 2021, the Malaysia Securities Commission (the Malaysia SC) announced that it had taken enforcement action against Binance Holdings Limited (registered in the Cayman Islands), Binance Digital Limited (registered in the United Kingdom), Binance UAB (registered in Lithuania) and Binance Asia Services Pte Ltd (registered in Singapore) for illegally operating an unregistered Digital Asset Exchange in Malaysia (the Malaysia Order). The Malaysia SC issued a public reprimand against the four Binance Entities and ordered. them to disable the website www.binance.com and mobile applications in Malaysia and cease all media and marketing activities in the country. The Malaysia SC also ordered Mr. Zhao, as the CEO of Binance Holdings Limited, to ensure that the above directives were carried out.
- f. On August 18, 2021, De Nederlandsche Bank (DNB) announced that Binance Holdings Limited as the owner of intellectual property rights, as well as the entities under which Binance provides crypto services in the Netherlands, were providing crypto services in the Netherlands without the required legal registration with DNB, were not in compliance with the Anti-Money Laundering and Anti-Terrorist Financing (Prevention) Act, and were illegally offering

services for the exchange between virtual and fiduciary currencies and was illegally offering custodian wallets (the Dutch Action). On April 25, 2022, DNB imposed an administrative fine of EUR 3,325,000 on Binance Holdings Limited.

- g. During the summer of 2021, financial regulators in Japan, Italy, Germany, Hong Kong, Malta and the Cayman Islands all issued separate, public warnings that Binance was not authorized to do business in their respective jurisdictions.
 - h. The Monetary Authority of Singapore (MAS) instructed Binance.com to stop offering regulated payment services to Singapore based users and, in September of 2021, placed Binance.com on its Investor Alert List to notify investors that Binance.com is not licensed or regulated by MAS (the Singapore Action).
 - i. On March 17, 2022, Binance Holdings Limited and Binance Canada Capital Markets Inc. gave an enforceable undertaking to the Ontario Securities Commission, whereby the Binance Entities acknowledged making false statements to customers about their authority to do business in Canada. The Company agreed to cease doing business in Ontario, among other things. See <https://www.osc.ca/en/news-events/news/statement-undertaking-given-binance>.
7. Several civil litigation and arbitration proceedings brought on behalf of customers have also been filed against BAM Trading, Mr. Zhao, and/or other Binance Entities.

Disclosure Failures

- 8. Mr. Zhao failed to make timely disclosures to state regulators of certain regulatory actions and civil litigation matters against himself and/or certain Binance Entities.
- 9. Mr. Zhao repeatedly attested that false or incomplete information in multiple Individual Forms (MU2) submitted to state regulators “are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law.”

10. Binance US initiated an application to the Department for a Vermont money transmitter license on June 23, 2020, by submitting an application through the Nationwide Multistate Licensing System (NMLS).
11. NMLS is the system of record for non-depository financial services licensing or registration used by participating state agencies, including the Department. NMLS allows applicants to apply to, and comply with disclosure requirements of, multiple state financial services regulators using certain common forms and a centralized system.
12. In order to apply for and maintain a Vermont money transmitter license, a Company must submit a complete NMLS Company Form (MU1) and upload a variety of other documents and disclosures to the Department through NMLS.
13. Each natural persons identified in the Company Form (MU1) must attest to and submit an NMLS Individual Form (MU2). In addition to officers, directors, qualifying individuals and branch managers, each natural person who is an indirect owner of ten percent (10%) or more of an applicant (each, a control person) must submit an Individual Form (MU2).
14. The Individual Form (MU2) contains a series of disclosure questions that each individual must answer “Yes” or “No,” including the following questions regarding regulatory actions:

Regulatory Action

(K) Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:

- (1) found you to have made a false statement or omission or been dishonest, unfair or unethical?
- (2) found you to have been involved in a violation of a financial services-related business regulation(s) or statute(s)?
- (3) found you to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted?
- (4) entered an order against you in connection with a financial services-related activity?
- (5) revoked your registration or license?
- (6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?

(7) barred you from association with an entity regulated by such commissions, authority, agency, or officer, or from engaging in a financial services-related business?

(8) issued a final order against you based on violations of any law or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

(9) entered an order concerning you in connection with any license or registration?

...

(M) Based upon activities that occurred while you exercised control over an organization, has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever taken any of the actions listed in (K) through (L) above against any organization?

...

15. All Disclosure Questions on the Individual Form (MU2) must be answered. Any “Yes” response requires an explanation to be provided in the Disclosure Explanations section of the Individual Form (MU2).
16. Individuals must update their Disclosure Questions when circumstances change in accordance with state law or within 30 days, whichever is shorter. A change in response requires an update to the Disclosure Explanation section.
17. Individuals are required to update their Disclosure Explanations in their Individual Form (MU2) when circumstances change in accordance with state law or within 30 days, whichever is shorter. This includes adding a new explanation for each new event, even if the disclosure question response has not changed.
18. In connection with Binance US’s application for a Vermont money transmitter license in various states, multiple Individual Forms (MU2) submissions and updates were submitted to state regulators through NMLS for Mr. Zhao.
19. After the Brazil Securities and Exchange Commission issued the Brazil Order on June 7, 2020, Mr. Zhao was required to update his Individual Form (MU2) to change his answer to Disclosure Question (M) from “No” to “Yes” and to disclose the Brazil Order in the Disclosure Explanations section.

20. Nevertheless, Mr. Zhao's Individual Form (MU2) filings dated June 15, 2020, June 23, 2020, July 10, 2020, August 24, 2020, September 28, 2020, November 13, 2020, November 17, 2020, November 24, 2020, and December 31, 2020, each answered "No" to Disclosure Question (M) and failed to disclose the Brazil Order in the Disclosure Explanations.
21. Mr. Zhao also failed to update his Individual Form (MU2) to change his answer to Disclosure Questions from "No" to "Yes" and update his Disclosure Explanations within 30 days after each of the Ohio Order (January 1, 2021), the UK FCA Notice (June 25, 2021), and the Malaysia Order (July 30, 2021).
22. Mr. Zhao updated his Individual Form (MU2) to change his answer to Disclosure Question M from "No" to "Yes" in his Individual Form (MU2) dated September 2, 2021, but Mr. Zhao only disclosed the Ohio Order at that time, and again failed to disclose the Brazil Order, the UK FCA Notice, the Malaysia Order, or the Dutch Action (August 18, 2021).
23. Each of the Individual Forms (MU2) of Mr. Zhao dated June 15, 2020, June 23, 2020, July 10, 2020, August 24, 2020, September 28, 2020, November 13, 2020, November 17, 2020, November 24, 2020, December 31, 2020, and September 2, 2021 included the following attestation by Mr. Zhao:

I Changpeng Zhao (1990446), (Applicant) on this date [APPLICABLE DATE OF FORM MU2] swear (or affirm) that I executed this application on my own behalf, that I am attesting to and submitting this application, and that I agree to and represent the following:

- (1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, **are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;***
- (2) To the extent any information previously submitted is not amended and hereby, such information remains accurate and complete;*
- (3) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into my background, in accordance with all laws and regulations;*

(4) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and

(5) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which I am applying.

If the Applicant has knowingly made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

I verify that I am the named person above and agree to the language as stated

Emphasis added.

24. On October 5, 2021, I sent correspondence informing counsel to Binance US that the Department was aware of the UK FCA Notice, the Malaysia Order and certain other publicly reported regulatory actions and asking why such matters had not been disclosed in NMLS.
25. On November 15, 2021, Mr. Zhao filed an updated Individual Form (MU2) changing the answers to several Disclosure Questions and disclosing the UK FCA Notice, the Malaysia Order, the Dutch Action, the Singapore Action (September 2021) and a number of other previously undisclosed actions and proceedings.

Other Matters and Concerns

26. The Department is investigating how the private keys for Binance US customer digital assets are custodied and whether and to what extent technology and services are provided to Binance US by unlicensed Binance Entities.
27. The Department is investigating the listing and trading of the digital asset BNB on the Binance US platform.
28. Binance US has disclosed to the Department prior unlicensed money transmission activity with customers in Vermont.
29. The Department believes that Vermont residents have accessed the services of unlicensed Binance Entities, including Vermont residents who were ejected from further use of such services after completing know-your-customer screening requirements implemented on or after August 2021.

30. The Department has repeatedly requested information from Binance US about prior unlicensed activity with Vermont residents by affiliates of Binance US and Mr. Zhao, which Binance US claims it does not have access to and cannot provide.

Signed under penalty of perjury this 4th day of January 2022.

/s/ Ethan McLaughlin

Ethan McLaughlin